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BEFORE THE ARIZONA CORPORATION

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Arizona Corporation Commission

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AZ CORP COMMISSION
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COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES L.L.C. FOR EXTENSION
OF ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. WS-02987A-05-0695

**RENEWED PETITION TO AMEND
DECISION 68961 PURSUANT TO
A.R.S. §40-252
AND
NOTICE OF SUBSTITUTION OF
COUNSEL**

In Decision 68961 (September 21, 2006), the Arizona Corporation Commission ("Commission") conditionally approved the application of Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company") to extend its certificate of convenience and necessity ("CC&N") to provide water and wastewater services for two developments known as Silverado Ranch and Skyline View Estates. One of the conditions in Decision 68961 requires the Company to file a copy of the aquifer protection permit ("APP") for the planned but as yet unconstructed Copper Basin regional water reclamation plant ("Copper Basin WRP"). For the reasons set forth in this petition, Johnson Utilities respectfully requests that the Commission amend Decision 68961 to remove the requirement that the Company file a copy of the APP for the Copper Basin WRP. Alternatively, the Company requests that the Commission extend the deadline for filing a copy of the APP for the Copper Basin WRP until no earlier than December 31, 2016.

The requirement that Johnson Utilities file a copy of the APP for the Copper Basin WRP also appears in Decision 68235 (Docket WS-02987A-05-0088) and Decision 68237 (Docket WS-02987A-04-0288). Contemporaneous with the filing of this petition, Johnson Utilities is filing petitions to amend Decisions 68235 and 68237 on the same grounds.

INTRODUCTION AND BACKGROUND

In Decision 68961, the Commission conditionally approved the extension of Johnson Utilities' water and sewer CC&Ns to include the Silverado Ranch and Skyline View Estates planned area developments. In the decision, the Commission ordered that "Johnson Utilities ... file with Docket Control, as a compliance item in this docket, a copy of the Aquifer Protection Permit and CAAG Section 208 Plan Amendment for the Copper Basin Regional Wastewater Treatment Facility, within 24 months of the effective date of this Decision," or September 21, 2008.¹ The decision further ordered that if the Company did not comply with the specified time for compliance, the CC&N extension would be deemed null and void after due process.

In a letter dated and docketed September 3, 2008, Johnson Utilities requested an extension of the compliance deadline for filing the APP for the Copper Basin WRP to October 25, 2009, so that the filing date would be consistent with the applicable filing dates (as they were extended) in Decisions 68235 and 68237. The Company further explained that it had to obtain a judgment from the court to obtain clear title to the Copper Basin WRP property in order to continue forward with the APP process.

On September 15, 2008, Johnson Utilities timely filed with Docket Control copies of the CAAG 208 Plan Amendments for the Company's Section 11 wastewater treatment plant and the planned Copper Basin WRP, in compliance with Decision 68961. In addition, the filing included approvals to construct issued by the Arizona Department of Environmental Quality ("ADEQ") for the water and wastewater backbone facilities servicing the CC&N extension area. This filing addressed all compliance items in Decision 68691 with the exception of the filing of the APP for the Copper Basin WRP.

In a Staff Memorandum dated September 30, 2008, Staff recommended that the compliance due date for Decision 68961 be extended to October 25, 2009, as requested by Johnson Utilities. Staff noted as follows:

[T]he current request for extension of time is simply an administrative action to synchronize the due dates for the Copper Basin APP in the multiple Johnson

¹ Decision 68961 at page 7, lines 12-15.

1 [Utilities] dockets in which this issue arises.²

2 Following the filing of the Staff Memorandum, it does not appear that the Commission
3 ever took action on Johnson Utilities' request to extend the compliance deadline for filing the
4 APP for the Copper Basin WRP.

5 In a letter to the Commission's Utilities Division Director dated September 15, 2009, and
6 docketed September 21, 2009, Johnson Utilities requested an additional extension of the
7 compliance deadline for filing the APP for the Copper Basin WRP. The Company explained that
8 due to the market slowdown, construction of the Copper Basin WRP would not be needed for
9 over five years. The Company further stated that ADEQ requires that construction commence
10 within one year of the issuance of an APP, and that it would not be in the best interest of the
11 Company to finish the process of obtaining the APP when construction of the Copper Basin WRP
12 would not begin before the permit would expire. The Company requested that the filing
13 requirement regarding the Copper Basin WRP be removed as a compliance item, in accordance
14 with A.R.S. §40-252.

15 Because the September 15, 2009, letter referenced A.R.S. §40-252, Staff did not respond
16 to the request, but instead, proceeded under the belief that it was incumbent upon the Commission
17 to first decide whether to reopen and amend Decision 68961. Similarly, having submitted the
18 written request to Staff, the Company assumed that Staff would respond to the request in the
19 docket. As a result, the request to amend Decision 68961 simply fell between the cracks and has
20 never been addressed. Given the passage of time since the request, and the fact that the
21 Commission never addressed the Company's September 3, 2008 request, Johnson Utilities
22 determined that the best approach would be to file this renewed petition to amend Decision
23 68961.

24 **RELIEF REQUESTED**

25 The backbone water and sewer infrastructure needed to serve the Silverado Ranch and
26 Skyline View Estates has been installed, but no homes have been constructed as of this date.
27

28 ² Staff Memorandum dated September 30, 2008, at page 2 (Docket WS-02987A-05-0695).

Johnson Utilities' sewer system has been designed and constructed so that wastewater flows coming from the developments can be properly treated at the Company's Section 11 wastewater treatment plant until such time as the Copper Basin WRP is needed. With the exception of filing the APP for the Copper Basin WRP, Johnson Utilities has fully complied with all of the other conditions of Decision 68961. The severe economic downturn that has battered the Arizona real estate market has persisted and delayed the start of many planned residential developments, including Silverado Ranch and Skyline View Estates. As a result, the Copper Basin WRP will not be needed for over five years. For all of these reasons, Johnson Utilities requests that the Commission amend Decision 68961 by removing the condition that the Company file a copy of the APP for the Copper Basin WRP. Because the backbone water and sewer infrastructure has already been installed, the public interest will be served by vesting the CC&N granted in Decision 68961. Alternatively, Johnson Utilities requests that the Commission extend the deadline for filing a copy of the APP for the Copper Basin WRP until no earlier than December 31, 2016.

NOTICE OF SUBSTITUTION OF COUNSEL

Notice is hereby given that Johnson Utilities has changed its legal counsel in this docket, and future communications, pleadings, procedural orders and other filings in this docket should be addressed as follows:

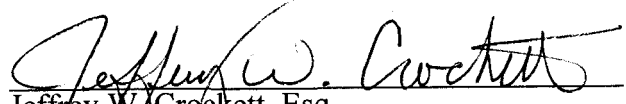
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1 RESPECTFULLY submitted this 23rd day of June, 2011.

2 BROWNSTEIN HYATT FARBER SCHRECK,
3 LLP

4 

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7 ORIGINAL and thirteen (13) copies filed
8 this 23rd day of June, 2011, with:

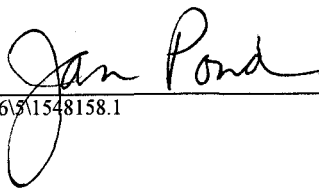
9 Docket Control
10 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

11 Copy of the foregoing hand-delivered
12 this 23rd day of June, 2011, to:

13 Lyn A. Farmer, Chief Administrative Law Judge
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